

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 1:22-CR-17
(Judge Kleeh)

JESSE ROSS DUKE,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [ECF NO. 32],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING**

This matter involves a Consent to Transfer in Criminal Action No. 3:22-CR-281, arising in the District of South Carolina, pursuant to Rule 20 of the Federal Rules of Criminal Procedure [ECF No. 23]. The proposed binding plea agreement contemplates Count One of the Indictment in this district, as well as Count One of the Indictment in the District of South Carolina.

On February 14, 2023, the Defendant, Jesse Ross Duke ("Duke"), appeared before United States Magistrate Judge Michael J. Aloi and moved for permission to enter a plea of **GUILTY** to Count One of the Indictment originating in the District of South Carolina and Count One of Indictment originating in this district. Count One of each Indictment charges him with Theft of Firearms from a Federal Firearms Licensee, in violation of 18 U.S.C. §§ 922(u) and 924(i)(1). Duke stated that he understood that the magistrate

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judge is not a United States District Judge, and Duke consented to pleading before the magistrate judge.

This Court referred Duke's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Duke's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Duke was competent to enter a plea, that the plea was freely and voluntarily given, that Duke understood the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [ECF No. 32] finding a factual basis for the plea and recommending that this Court accept Duke's plea of guilty to Count One in each of the Indictments.

The magistrate judge **remanded** Duke to the custody of the United States Marshals Service.

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The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Duke nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [ECF No. 32], provisionally **ACCEPTS** Duke's guilty plea, and **ADJUDGES** him **GUILTY** of the crimes charged in Count One of each of the Indictments.

Pursuant to Fed. R. Crim. P. 11(c) (3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Duke, and prepare a presentence investigation report for the Court;

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2. The Government and Duke shall each provide their narrative descriptions of the offense to the Probation Officer by **March 10, 2023**;

3. The presentence investigation report shall be disclosed to Duke, his counsel, and the Government on or before **April 24, 2023**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Written objections to the presentence investigation report, if any, shall be submitted to the opposing party and to the probation officer on or before **May 8, 2023**;

5. Responses to objections to the presentence investigation report, if any, shall be submitted to the opposing party and to the probation officer on or before **May 15, 2023**;

6. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **June 14, 2023**; and

7. Counsel may file any written sentencing memoranda or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **June 21, 2023**.

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The Court further **ORDERS** that prior to sentencing, Duke's counsel shall review with him the revised Standard Probation and Supervised Release Conditions adopted by this Court on November 29, 2016, pursuant to the standing order entered by Chief Judge Groh, In Re: Revised Standard Probation and Supervised Release Conditions, 3:16-MC-56.

The Court will conduct the **Sentencing Hearing** for Duke on **July 11, 2023, at 12:30 p.m.**, at the **Clarksburg, West Virginia**, point of holding court. If counsel anticipates having multiple witnesses or an otherwise lengthy sentencing hearing, please notify the Judge's chamber staff so that an adequate amount of time can be scheduled.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: March 6, 2023

Tom S. Klee
THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA